



[4910-06-P]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 209, 213, 214, 215, 217, 218, 219, 220, 221, 222, 223, 224, 225, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 270, and 272

[Docket No. FRA-2016-0090; Notice No. 1]

RIN 2130-AC63

Moving the Federal Railroad Administration (FRA) Civil Penalties Schedules and Guidelines from the Code of Federal Regulations (CFR) to the FRA Website

AGENCY: FRA, U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: To eliminate unnecessary costs and improve public access, FRA is removing its civil penalties schedules and guidelines from the CFR and publishing them on the FRA website.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION: FRA is authorized as the delegate of the Secretary of Transportation (Secretary) to enforce the Federal railroad safety statutes, regulations, and orders, including the civil penalty provisions codified primarily at 49 U.S.C. ch. 213. *See* 49 U.S.C. 103 and 49 CFR 1.89; 49 U.S.C. chs. 201-213. The Secretary also authorized FRA to enforce certain hazardous materials transportation

statutes, regulations, and orders, including the civil penalty provisions, relating to railroad transportation. *See* 49 CFR 1.89; 49 U.S.C. ch. 51.¹ FRA currently has safety regulations in 34 parts of the CFR that contain provisions establishing the agency's authority to impose civil penalties if a person violates any requirement in the pertinent portion of a statute or the CFR, and 32 CFR parts containing FRA regulations include an appendix with a civil penalty schedule or guidelines.

Since 1988, FRA has included the civil penalties schedules or guidelines as an appendix in the corresponding CFR part. Civil penalties schedules and guidelines are not regulations nor are they subject to notice-and-comment requirements. They are merely policy statements that do not bind FRA. Instead, FRA retains full discretion to assess civil penalties for violations that are between the minimum and maximum amounts authorized by statute and adjusted for inflation.² Yet, their place in the CFR has necessitated that any changes to them, including adjustments for inflation required by federal law, be published in the *Federal Register*.

Like other federal agencies, FRA is charged by the page for each page in its segment of the CFR, namely title 49, parts 200-299. Currently, the annual rate is \$85 per

¹ Civil penalties related to hazardous materials transportation statutes, regulations, or orders administered by other agencies, such as the Pipeline and Hazardous Materials Safety Administration, are not affected by this rule.

² For railroad safety violations, the current statutory minimum civil penalty is \$870, the ordinary maximum civil penalty is \$28,474, and the aggravated maximum civil penalty is \$113,894. *See* 83 FR 60732 (Nov. 27, 2018). For hazardous materials violations, the current statutory minimum civil penalty (for violations relating to training) is \$481, the ordinary maximum civil penalty is \$79,976, and the aggravated maximum civil penalty is \$186,610. *Id.*

page.³ FRA, like other agencies, is also charged for each column it prints in the *Federal Register*, currently at a rate of \$151 per column.⁴

In this final rule, FRA is removing the civil penalties schedules and guidelines from 49 CFR parts 200-299 and updating references to the schedules and guidelines to reflect their new location on the FRA website, without substantive change.⁵ This move will end the unnecessary costs of amending the schedules and guidelines through the *Federal Register* and printing them in the CFR. At the same time, locating the schedules and guidelines on the FRA website will improve public access to those statements of agency policy and simplify enforcement by grouping all schedules and guidelines into one location. Changes for inflation to the minimum, maximum, and aggravated maximum penalty amounts will still be published in the *Federal Register*, as required by federal law.

Public Participation

FRA is proceeding to a final rule without a notice of proposed rulemaking or an opportunity for public comment. The civil penalties schedules and guidelines, and therefore this rule to move those schedules and guidelines to FRA's website without substantive change, are general statements of policy. As such, the notice and comment procedures under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(A), do not apply.

³ See GPO Circular Letter No. 1007 (June 4, 2018), available at <https://www.gpo.gov/how-to-work-with-us/agency/circular-letters/open-requisitions-sfl-for-federal-register-and-code-of-federal-regulations>.

⁴ *Id.*

⁵ This final rule redirects any references to an appendix in the CFR that formerly contained civil penalties schedules and guidelines to FRA's website at www.fra.dot.gov. FRA's main website (www.fra.dot.gov) will contain a link to FRA's civil penalties guidance website (www.fra.dot.gov/Page/P1155) linking to a tabbed workbook containing each respective CFR part's civil penalties table. Language referring to either a "statement of agency civil penalty policy" or "schedule of civil penalty amounts" is maintained from the existing CFR. See, e.g., 49 CFR 214.5; 49 CFR 222.11.

Regulatory Impact

A. Executive Orders 12866, 13771, and DOT Regulatory Policies and Procedures

FRA evaluated this final rule consistent with Executive Order 12866 (Regulatory Planning and Review), Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs), and DOT policies and procedures. *See* 44 FR 11034, Feb. 26, 1979; 76 FR 3821, Jan. 21, 2011; and 82 FR 9339, Jan. 30, 2017. In this final rule, FRA solely replaces statements of agency policy with references to the statements' new location on the FRA website, and is not a significant regulatory action under section 3(f) of Executive Order 12866.

FRA will realize cost savings from not printing the civil penalties schedules and guidelines in the yearly CFR revision, and therefore this rulemaking is a deregulatory action under Executive Order 13771. Counting the number of pages in the current CFR (as revised Oct. 1, 2018) used by the civil penalties schedules and guidelines, FRA estimates 80.5 fewer pages would be printed in each CFR revision. The migration of the civil penalties schedules and guidelines is a one-time occurrence; however, the cost savings accrue annually, and therefore FRA accounts for them as a yearly cost savings. Also, FRA will realize cost savings from not publishing civil penalty schedules in the *Federal Register* associated with new regulations and amendments to existing regulations. As mentioned, the annual updates for inflation only affect the minimum, maximum, and aggravated maximum penalties, which will continue to be published, resulting in no cost savings. To account for publishing fewer civil penalty schedules associated with new regulations, FRA estimates it published 5 new regulations in the *Federal Register* in the last 10 years, or one-half regulation per year. Each regulation had

a corresponding civil penalty schedule occupying approximately 3 columns in the *Federal Register*, or 1.5 columns per one-half regulation per year. In addition, FRA estimates allocating 3 columns per year will sufficiently cover changes to civil penalty schedules published for amendments to existing regulations, for a total *Federal Register* savings of 4.5 columns per year. The cost savings are monetized using the publication costs noted earlier, and illustrated in the table below. FRA uses a 10-year period of analysis in estimating future cost savings to reflect a reasonable regulatory cycle for new regulations and review of existing regulations.

Table A-1: Cost Savings from not Publishing Civil Monetary Penalty Schedules in the CFR and the *Federal Register*.

Year	CFR (80.5 pages @\$85 per page)	<i>Federal Register</i> (4.5 columns @\$151 per column)	Total Cost Savings
2019	\$6,842.50	\$679.50	\$7,522.00
2020	\$6,842.50	\$679.50	\$7,522.00
2021	\$6,842.50	\$679.50	\$7,522.00
2022	\$6,842.50	\$679.50	\$7,522.00
2023	\$6,842.50	\$679.50	\$7,522.00
2024	\$6,842.50	\$679.50	\$7,522.00
2025	\$6,842.50	\$679.50	\$7,522.00
2026	\$6,842.50	\$679.50	\$7,522.00
2027	\$6,842.50	\$679.50	\$7,522.00

2028	\$6,842.50	\$679.50	\$7,522.00
Total Undiscounted Cost Savings, Nominal			\$75,220
Present Value (PV) of Total Cost Savings Discounted at 7%			\$52,831
Present Value (PV) of Total Cost Savings Discounted at 3%			\$64,164
Total Annualized Cost Savings Using 7% Discount Rate			\$7,522
Total Annualized Cost Savings Using 3% Discount Rate			\$7,522

B. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980 (RFA), Pub. L. 96-354, as amended, and codified as amended at 5 U.S.C. 601-612, and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking), require agency review of proposed and final rules to assess their impact on “small entities” for purposes of the RFA. An agency must prepare a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant economic impact on a substantial number of small entities. FRA does not expect this final rule will have a significant economic impact on a substantial number of small entities. Although this final rule will apply to railroads, hazardous materials shippers, and others that are considered small entities, there is no economic impact on any person who complies or is required to comply with the Federal railroad safety laws and the regulations and orders issued under those laws, and the Federal hazardous materials laws and the regulations, special permits,

approvals, and orders issued under those laws, because the rule does not change any penalty to which an entity could be subject.

In addition, FRA has determined the RFA does not apply to this rulemaking. FRA is not required to publish its civil penalty schedules and guidelines in the CFR, and the civil penalties schedules and guidelines are general statements of policy, thus the APA notice and comment procedures do not apply to the either penalty schedules themselves or the policy decision to change their location. The Small Business Administration's A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act (2003), provides that:

If, under the APA or any rule of general applicability governing federal grants to state and local governments, the agency is required to publish a general notice of proposed rulemaking (NPRM), the RFA must be considered [citing 5 U.S.C. 604(a)]...If an NPRM is not required, the RFA does not apply.

Therefore, because FRA is not required to publish the schedules and guidelines in the CFR, the RFA does not apply.

C. Federalism

Executive Order 13132, "Federalism," 64 FR 43255 (Aug. 10, 1999), requires FRA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule will not have a substantial effect on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the

various levels of government. Thus, consistent with Executive Order 13132, FRA is not required to prepare a Federalism assessment.

D. Paperwork Reduction Act

There are no new information collection requirements in this final rule to submit for OMB review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

E. Unfunded Mandates Reform Act of 1995

This final rule will not result in the expenditure, in the aggregate, of \$100,000,000 or more, adjusted for inflation, in any one year by State, local, or Indian Tribal governments, or the private sector. Thus, consistent with Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 2 U.S.C. 1532), FRA is not required to prepare a written statement detailing the effect of such an expenditure.

F. Environmental Impact

FRA has evaluated this final rule under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), other environmental statutes, related regulatory requirements, and its “Procedures for Considering Environmental Impacts” (FRA’s NEPA Procedures) (64 FR 28545, May 26, 1999). FRA has determined that this final rule is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA’s NEPA Procedures, “Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions of air or water pollutants or noise or increased traffic congestion in any mode of transportation.” *See* 64 FR 28547, May 26, 1999. Categorical exclusions (CEs) are actions identified in an agency’s NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or

environmental impact statement (EIS). *See* 40 CFR 1508.4.

In analyzing the applicability of a CE, the agency must also consider whether extraordinary circumstances warrant a more detailed environmental review through the preparation of an EA or EIS. *See id.* The purpose of this rulemaking is to make FRA-maintained civil penalty schedules and guidelines more easily available. Specifically, FRA is removing civil penalty schedules and guidelines under its authority from the CFR and replacing references to them with references to their new location on FRA's website. Under section 4(c) and (e) of FRA's NEPA Procedures, FRA has concluded no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review.

FRA does not anticipate any environmental impacts from this final rule and finds there are no extraordinary circumstances present in connection with this final rule.

G. Executive Order 12898 (Environmental Justice)

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and DOT Order 5610.2(a) (91 FR 27534, May 10, 2012) require DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations. The DOT Order instructs DOT agencies to address compliance with Executive Order 12898 and requirements within the DOT Order in rulemaking activities, as appropriate. FRA has evaluated this final rule under Executive Order 12898 and the DOT Order and has determined that it would not cause disproportionately high

and adverse human health and environmental effects on minority populations or low-income populations.

H. Executive Order 13175 (Tribal Consultation)

FRA has evaluated this final rule under the principles and criteria contained in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000. The final rule would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal laws. Therefore, the funding and consultation requirements of Executive Order 13175 do not apply, and FRA is not required to prepare a tribal summary impact statement.

List of Subjects

49 CFR Part 209

Administrative practice and procedure, Hazardous materials transportation, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 213

Bridges, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 214

Bridges, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 215

Freight, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Parts 217, 221, 224, 229, 230, 232, 233, and 239

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 218

Occupational safety and health, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 220

Penalties, Radio, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 222

Administrative practice and procedure, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 223

Glazing standards, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 225

Investigations, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 227

Noise control, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 228

Penalties, Railroad employees, Reporting and recordkeeping requirements.

49 CFR Part 231

Penalties, Railroad safety.

49 CFR Part 234

Highway safety, Penalties, Railroad safety, Reporting and recordkeeping requirements, State and local governments.

49 CFR Part 235

Administrative practice and procedure, Penalties, Railroad safety, Railroad signals, Reporting and recordkeeping requirements.

49 CFR Part 236

Penalties, Positive Train Control, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 237

Bridges, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 238

Fire prevention, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 240

Administrative practice and procedure, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 241

Communications, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 242

Administrative practice and procedure, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 243

Administrative practice and procedure, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 270

Penalties, Railroad safety, Reporting and recordkeeping requirements, System safety.

49 CFR Part 272

Penalties, Railroad employees, Railroad safety, Railroads, Safety, Transportation.

The Final Rule

In consideration of the foregoing, parts 209, 213, 214, 215, 217, 218, 219, 220, 221, 222, 223, 224, 225, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 270, and 272 of subtitle B, chapter II of title 49 of the Code of Federal Regulations are amended as follows:

PART 209—[AMENDED]

1. The authority citation for part 209 continues to read as follows:

Authority: 49 U.S.C. 5123, 5124, 20103, 20107, 20111, 20112, 20114; 28 U.S.C. 2461, note; and 49 CFR 1.89.

2. Revise the last sentence of § 209.105(a) to read as follows:

§ 209.105 Notice of probable violation.

(a) * * * FRA's website at *www.fra.dot.gov* contains guidelines used by the chief counsel in making initial penalty assessments.

* * * * *

3. In appendix A to part 209, revise the section entitled “Penalty Schedules; Assessment of Maximum Penalties” to read as follows:

**APPENDIX A TO PART 209—STATEMENT OF AGENCY POLICY CONCERNING
ENFORCEMENT OF THE FEDERAL RAILROAD SAFETY LAWS**

* * * * *

PENALTY SCHEDULES; ASSESSMENT OF MAXIMUM PENALTIES

As recommended by the Department of Transportation in its initial proposal for rail safety legislative revisions in 1987, the RSIA raised the maximum civil penalties for violations of the Federal rail safety laws, regulations, or orders. *Id.*, secs. 3, 13-15, 17. Pursuant to sec. 16 of RSIA, the penalty for a violation of the Hours of Service Act was changed from a flat \$500 to a penalty of up to \$1,000, as the Secretary of Transportation deems reasonable. Under all the other statutes, and regulations and orders under those statutes, the maximum penalty was raised from \$2,500 to \$10,000 per violation, except that where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, the penalty was raised to a maximum of \$20,000 per violation (“the aggravated maximum penalty”).

The Rail Safety Enforcement and Review Act (RSERA), Pub. L. 102-365, 106 Stat. 972, enacted in 1992, increased the maximum penalty from \$1,000 to \$10,000, and provided for an aggravated maximum penalty of \$20,000 for a violation of the Hours of Service Act, making these penalty amounts uniform with those of FRA's other safety laws, regulations, and orders. RSERA also increased the minimum civil monetary penalty from \$250 to \$500 for all of FRA's safety regulatory provisions and orders. *Id.*, sec. 4(a).

The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, 104 Stat. 890, note, as amended by Section 31001(s)(1) of the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, 110 Stat. 1321-373, April 26, 1996) (Inflation Act) required that agencies adjust by regulation each minimum and maximum civil monetary penalty within the agency's jurisdiction for inflation and make subsequent adjustments once every four years after the initial adjustment. Accordingly, FRA's minimum and maximum civil monetary penalties have been periodically adjusted, pursuant to the Inflation Act, through rulemaking.

The Rail Safety Improvement Act of 2008 ("RSIA of 2008"), enacted October 16, 2008, raised FRA's civil monetary ordinary and aggravated maximum penalties to \$25,000 and \$100,000 respectively. FRA amended the civil penalty provisions in its regulations so as to make \$25,000 the ordinary maximum penalty per violation and \$100,000 the aggravated maximum penalty per violation, as authorized by the RSIA of 2008, in a final rule published on December 30, 2008 in the Federal Register. The December 30, 2008 final rule also adjusted the minimum civil penalty from \$550 to \$650 pursuant to Inflation Act requirements. A correcting amendment to the civil penalty provisions in 49 CFR part 232 was published on April 6, 2009.

Effective June 25, 2012, the aggravated maximum penalty was raised from \$100,000 to \$105,000 pursuant to the Inflation Act.

On November 2, 2015, President Barack Obama signed the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Inflation Act). Pub. L. 114-74, Sec. 701. Under the 2015 Inflation Act, agencies must make a catch-up adjustment for civil monetary penalties with the new penalty levels published by July 1,

2016, to take effect no later than August 1, 2016. Moving forward, agencies must make annual inflationary adjustments, starting January 15, 2017, based on Office of Management and Budget guidance. Under the 2015 Inflation Act, effective April 3, 2017, the minimum civil monetary penalty was raised from \$839 to \$853, the ordinary maximum civil monetary penalty was raised from \$27,455 to \$27,904, and the aggravated maximum civil monetary penalty was raised from \$109,819 to \$111,616. Effective November 27, 2018, the minimum civil monetary penalty was raised from \$853 to \$870, the ordinary maximum civil monetary penalty was raised from \$27,904 to \$28,474, and the aggravated maximum civil monetary penalty was raised from \$111,616 to \$113,894.

FRA's traditional practice has been to issue penalty schedules assigning to each particular regulation or order specific dollar amounts for initial penalty assessments. The schedule (except where issued after notice and an opportunity for comment) constitutes a statement of agency policy and was historically issued as an appendix to the relevant part of the Code of Federal Regulations. Schedules are now published on FRA's website at www.fra.dot.gov. For each regulation or order, the schedule shows two amounts within the \$870 to \$28,474 range in separate columns, the first for ordinary violations, the second for willful violations (whether committed by railroads or individuals). In one instance—49 CFR part 231—the schedule refers to sections of the relevant FRA defect code rather than to sections of the CFR text. Of course, the defect code, which is simply a reorganized version of the CFR text used by FRA to facilitate computerization of inspection data, is substantively identical to the CFR text.

The schedule amounts are meant to provide guidance as to FRA's policy in predictable situations, not to bind FRA from using the full range of penalty authority where extraordinary circumstances warrant. The Senate report on the bill that became the RSIA stated:

It is expected that the Secretary would act expeditiously to set penalty levels commensurate with the severity of the violations, with imposition of the maximum penalty reserved for violation of any regulation where warranted by exceptional circumstances. S. Rep. No. 100-153, 10th Cong., 2d Sess. 8 (1987).

Accordingly, under each of the schedules (ordinarily in a footnote), and regardless of the fact that a lesser amount might be shown in both columns of the schedule, FRA reserves the right to assess the statutory maximum penalty of up to \$113,894 per violation where a pattern of repeated violations or a grossly negligent violation has created an imminent hazard of death or injury or has caused death or injury. FRA indicates in the penalty demand letter when it uses the higher penalty amount instead of the penalty amount listed in the schedule.

* * * * *

Appendix B to Part 209—[Amended]

4. Amend appendix B to part 209 by:

a. Removing “49 CFR §§172.200-.203” and adding in its place “49 CFR 172.200 through 172.203”; and

b. Removing the heading “Civil Penalty Assessment Guidelines” and the two tables following the heading.

PART 213—[AMENDED]

5. The authority citation for part 213 continues to read as follows:

Authority: 49 U.S.C. 20102-20114 and 20142; Sec. 403, Div. A, Pub. L. 110-432, 122 Stat. 4885; 28 U.S.C. 2461, note; and 49 CFR 1.89.

6. Revise the last sentence of § 213.15(a) to read as follows:

§ 213.15 Penalties.

(a) * * * See FRA's website at *www.fra.dot.gov* for a statement of agency civil penalty policy.

* * * * *

Appendix B to Part 213—[Removed and Reserved]

7. Remove and reserve appendix B to part 213.

PART 214—[AMENDED]

8. The authority citation for part 214 continues to read as follows:

Authority: 49 U.S.C. 20102-20103, 20107, 21301-21302, 31304, 28 U.S.C. 2461, note; and 49 CFR 1.89.

9. Revise the last sentence of § 214.5 to read as follows:

§ 214.5 Responsibility for compliance.

* * * See FRA's website at *www.fra.dot.gov* for a statement of agency civil penalty policy.

Appendix A to Part 214—[Removed]

10. Remove appendix A to part 214.

PART 215—[AMENDED]

11. The authority citation for part 215 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.89.

12. Revise the last sentence of § 215.7 to read as follows:

§ 215.7 Prohibited acts.

* * * See FRA's website at *www.fra.dot.gov* for a statement of agency civil penalty policy.

Appendix B to Part 215—[Removed and Reserved]

13. Remove and reserve appendix B to part 215.

PART 217—[AMENDED]

14. The authority citation for part 217 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.89.

15. Revise the last sentence of § 217.5 to read as follows:

§ 217.5 Penalty.

* * * See FRA's website at *www.fra.dot.gov* for a statement of agency civil penalty policy.

Appendix A to Part 217—[Removed]

16. Remove appendix A to part 217.

PART 218—[AMENDED]

17. The authority citation for part 218 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.89.

18. Revise the last sentence of § 218.9 to read as follows:

§ 218.9 Civil penalty.

* * * See FRA's website at *www.fra.dot.gov* for a statement of agency civil penalty policy.

19. Revise § 218.41 to read as follows:

§ 218.41 Noncompliance with hump operations rule.

A person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who fails to comply with a railroad's operating rule issued pursuant to § 218.39 is subject to a penalty. See FRA's website at *www.fra.dot.gov* for a statement of agency civil penalty policy.

20. Revise § 218.55 to read as follows:

§ 218.55 Tampering prohibited.

Any individual who willfully disables a safety device is subject to a civil penalty and to disqualification from performing safety-sensitive functions on a railroad if found unfit for such duties under the procedures provided for in 49 CFR part 209. See FRA's website at *www.fra.dot.gov* for a statement of agency civil penalty policy.

21. Revise § 218.57 to read as follows:

§ 218.57 Responsibilities of individuals.

Any individual who knowingly operates a train, or permits it to be operated, when the controlling locomotive of that train is equipped with a disabled safety device, is subject to a civil penalty and to disqualification from performing safety-sensitive functions on a railroad if found to be unfit for such duties. See appendix B to this part for a statement of agency enforcement policy concerning violations of this section. See FRA's website at *www.fra.dot.gov* for a statement of agency civil penalty policy.

22. Revise § 218.59 to read as follows:

§ 218.59 Responsibilities of railroads.

Any railroad that operates a train when the controlling locomotive of a train is equipped with a disabled safety device is subject to a civil penalty. See FRA's website at www.fra.dot.gov for a statement of agency civil penalty policy.

Appendix A to Part 218—[Removed and Reserved]

23. Remove and reserve appendix A to part 218.

PART 219—[AMENDED]

24. The authority citation for part 219 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20140, 21301, 21304, 21311; 28 U.S.C. 2461, note; Sec. 412, Div. A, Pub. L. 110-432, 122 Stat. 4889 (49 U.S.C. 20140, note); and 49 CFR 1.89.

25. Revise the last sentence of § 219.10 to read as follows:

§ 219.10 Penalties.

* * * See FRA's website at www.fra.dot.gov for a statement of agency civil penalty policy.

Appendix A to Part 219—[Removed and Reserved]

26. Remove and reserve appendix A to part 219.

PART 220—[AMENDED]

27. The authority citation for part 220 continues to read as follows:

Authority: 49 U.S.C. 20102-20103, 20103, note, 20107, 21301-21302, 20701-20703, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

28. Revise the last sentence of § 220.7 to read as follows:

§ 220.7 Penalty.

* * * See FRA's website at *www.fra.dot.gov* for a statement of agency civil penalty policy.

Appendix C to Part 220—[Removed]

29. Remove appendix C to part 220.

PART 221—[AMENDED]

30. The authority citation for part 221 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.89.

31. Revise the last sentence of § 221.7 to read as follows:

§ 221.7 Civil penalty.

* * * See FRA's website at *www.fra.dot.gov* for a statement of agency civil penalty policy.

Appendix C to Part 221—[Removed]

32. Remove appendix C to part 221.

PART 222—[AMENDED]

33. The authority citation for part 222 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20153, 21301, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

34. Revise the section heading and last sentence of § 222.11 to read as follows:

§ 222.11 What are the penalties for failure to comply with this part?

* * * FRA's website at *www.fra.dot.gov* contains a schedule of civil penalty amounts used in connection with this part.

Appendix H to Part 222—[Removed]

35. Remove appendix H to part 222.

PART 223—[AMENDED]

36. The authority citation for part 223 continues to read as follows:

Authority: 49 U.S.C. 20102-20103, 20133, 20701-20702, 21301-21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

37. Revise the last sentence of § 223.7 to read as follows:

§ 223.7 Responsibility.

* * * See FRA's website at *www.fra.dot.gov* for a statement of agency civil penalty policy.

Appendix B to Part 223—[Removed]

38. Remove appendix B to part 223.

PART 224—[AMENDED]

39. The authority citation for part 224 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20148 and 21301; 28 U.S.C. 2461, note; and 49 CFR 1.89.

40. Revise the last sentence of § 224.11(a) to read as follows:

§ 224.11 Penalties.

(a)* * * FRA's website at *www.fra.dot.gov* contains a schedule of civil penalty amounts used in connection with this part.

* * * * *

Appendix A to Part 224—[Removed and Reserved]

41. Remove and reserve appendix A to part 224.

PART 225—[AMENDED]

42. The authority citation for part 225 is revised to read as follows:

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901-20902, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

43. Revise the last sentence of § 225.12(h)(1) to read as follows:

§ 225.12 Rail Equipment Accident/Incident Reports alleging employee human factor as cause; Employee Human Factor Attachment; notice to employee; employee supplement.

* * * * *

(h) * * *

(1) * * * See FRA's website at *www.fra.dot.gov* for a statement of agency civil penalty policy.

* * * * *

44. Revise the third sentence of § 225.29 to read as follows:

§ 225.29 Penalties.

* * * See FRA's website at *www.fra.dot.gov* for a statement of agency civil penalty policy. * * *

Appendix A to Part 225—[Removed and Reserved]

45. Remove and reserve appendix A to part 225.

PART 227—[AMENDED]

46. The authority citation for part 227 continues to read as follows:

Authority: 49 U.S.C. 20103, 20103, note, 20701-20702; 28 U.S.C. 2461, note; and 49 CFR 1.89.

47. Revise the last sentence of § 227.9(a) to read as follows:

§ 227.9 Penalties.

(a) * * * See FRA's website at *www.fra.dot.gov* for a statement of agency civil penalty policy.

* * * * *

Appendix G to Part 227—[Removed]

48. Remove appendix G to part 227.

PART 228—[AMENDED]

49. The authority citation for part 228 is revised to read as follows:

Authority: 49 U.S.C. 103, 20103, 20107, 21101-21109; Sec. 108, Div. A, Pub. L. 110-432, 122 Stat. 4860-4866, 4893-4894; 49 U.S.C. 21301, 21303, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

50. Revise the third sentence of § 228.6(a) to read as follows:

§ 228.6 Penalties.

(a) * * * See FRA's website at *www.fra.dot.gov* for a statement of agency civil penalty policy. * * *

* * * * *

Appendix B to Part 228—[Removed and Reserved]

51. Remove and reserve appendix B to part 228.

PART 229—[AMENDED]

52. The authority citation for part 229 continues to read as follows:

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901-02, 21301, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

53. Revise the last sentence of § 229.7(b) to read as follows:

§ 229.7 Prohibited acts and penalties.

* * * * *

(b) * * * FRA's website at *www.fra.dot.gov* contains a statement of agency civil penalty policy.

* * * * *

Appendix B to Part 229—[Removed and Reserved]

54. Remove and reserve appendix B to part 229.

PART 230—[AMENDED]

55. The authority citation for part 230 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20702; 28 U.S.C. 2461, note; and 49 CFR 1.89.

Appendix D to Part 230—[Removed]

56. Remove appendix D to part 230.

PART 231—[AMENDED]

57. The authority citation for part 231 continues to read as follows:

Authority: 49 U.S.C. 20102-20103, 20107, 20131, 20301-20303, 21301-21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

58. Revise the last sentence of § 231.0(f) to read as follows:

§ 231.0 Applicability and penalties.

* * * * *

(f) * * * See FRA's website at *www.fra.dot.gov* for a statement of agency civil penalty policy.

* * * * *

59. Revise the last sentence of § 231.33(g) to read as follows:

§ 231.33 Procedure for special approval of existing industry safety appliance standards.

* * * * *

(g) * * * Civil penalties will be assessed under this part by using the applicable defect code in the statement of agency civil penalty policy on FRA's website at *www.fra.dot.gov*.

60. Revise the last sentence of § 231.35(g) to read as follows:

§ 231.35 Procedure for modification of an approved industry safety appliance standard for new railcar construction.

* * * * *

(g) * * * Civil penalties will be assessed under this part by using the applicable defect code in the statement of agency civil penalty policy on FRA's website at *www.fra.dot.gov*.

Appendix A to Part 231—[Removed]

61. Remove appendix A to part 231.

PART 232—[AMENDED]

62. The authority citation for part 232 continues to read as follows:

Authority: 49 U.S.C. 20102-20103, 20107, 20133, 20141, 20301-20303, 20306, 21301-21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

63. Revise the last sentence of § 232.11(a) to read as follows:

§ 232.11 Penalties.

(a) * * * FRA's website at *www.fra.dot.gov* contains a schedule of civil penalty amounts used in connection with this part.

* * * * *

64. Revise the first sentence of § 232.213(b) to read as follows:

§ 232.213 Extended haul trains.

* * * * *

(b) Failure to comply with any of the requirements contained in paragraph (a) of this section will be considered an improper movement of a designated priority train for which appropriate civil penalties may be assessed as outlined in the statement of civil penalty policy on FRA's website at *www.fra.dot.gov*. * * *

Appendix A to Part 232—[Removed and Reserved]

65. Remove and reserve appendix A to part 232.

PART 233—[AMENDED]

66. The authority citation for part 233 continues to read as follows:

Authority: 49 U.S.C. 504, 522, 20103, 20107, 20501-20505, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

67. Revise the last sentence of § 233.11 to read as follows:

§ 233.11 Civil penalties.

* * * See FRA's website at *www.fra.dot.gov* for a statement of agency civil penalty policy.

Appendix A to Part 233—[Removed]

68. Remove appendix A to part 233.

PART 234—[AMENDED]

69. The authority citation for part 234 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20152, 20160, 21301, 21304, 21311, 22501 note; Pub. L. 110-432, Div. A., Sec. 202, 28 U.S.C. 2461, note; and 49 CFR 1.89.

70. Amend § 234.6 by removing “§234.11 of this part” everywhere it appears and adding “§234.11” in its place and revising the third sentence of paragraph (a) to read as follows:

§ 234.6 Penalties.

(a) * * * FRA’s website at *www.fra.dot.gov* contains a schedule of civil penalty amounts used in connection with this part. * * *

* * * * *

Appendix A to Part 234—[Removed and Reserved]

71. Remove and reserve appendix A to part 234.

PART 235—[AMENDED]

72. The authority citation for part 235 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.89.

73. Revise the last sentence of § 235.9 to read as follows:

§ 235.9 Civil penalty.

* * * See FRA’s website at *www.fra.dot.gov* for a statement of agency civil penalty policy.

Appendix A to Part 235—[Removed]

74. Remove appendix A to part 235.

PART 236—[AMENDED]

75. The authority citation for part 236 is revised to read as follows:

Authority: 49 U.S.C. 20102-20103, 20107, 20133, 20141, 20157, 20301-20303, 20306, 20501-20505, 20701-20703, 21301-21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

76. Revise the last sentence of § 236.0(f) to read as follows:

§ 236.0 Applicability, minimum requirements, and penalties.

* * * * *

(f) * * * See FRA's website at *www.fra.dot.gov* for a statement of agency civil penalty policy.

* * * * *

Appendix A to Part 236—[Removed and Reserved]

77. Remove and reserve appendix A to part 236.

PART 237—[AMENDED]

78. The authority citation for part 237 continues to read as follows:

Authority: 49 U.S.C. 20102-20114; Pub. L. 110-432, Div. A, Sec. 417; 28 U.S.C. 2461, note; and 49 CFR 1.89.

79. Revise the last sentence of § 237.7(a) to read as follows:

§ 237.7 Penalties.

(a) * * * See FRA's website at *www.fra.dot.gov* for a statement of agency civil penalty policy.

* * * * *

Appendix B to Part 237—[Removed]

80. Remove appendix B to part 237.

PART 238—[AMENDED]

81. The authority citation for part 238 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302-20303, 20306, 20701-20702, 21301-21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

82. Revise the last sentence of § 238.11(a) to read as follows:

§ 238.11 Penalties.

(a) * * * See FRA's website at *www.fra.dot.gov* for a statement of agency civil penalty policy.

* * * * *

83. Revise the last sentence of § 238.229(d) to read as follows:

§ 238.229 Safety appliances—general.

* * * * *

(d) * * * When appropriate, civil penalties for improperly using or hauling a piece of equipment with a defective welded safety appliance or safety appliance bracket or support addressed in this section will be assessed as an improperly applied safety appliance pursuant to the penalty schedule on FRA's website at *www.fra.dot.gov* under the appropriate defect code contained therein.

* * * * *

84. In § 238.230, revise the last sentence of paragraph (c) introductory text, add a heading for paragraph (e), and revise the last sentence of paragraph (e) to read as follows:

§ 238.230 Safety appliances—new equipment.

* * * * *

(c) * * * When appropriate, civil penalties for improperly using or hauling a piece of equipment with a defective welded safety appliance or safety appliance bracket or support addressed in this section will be assessed pursuant to the penalty schedule on FRA's website at *www.fra.dot.gov* under the appropriate defect code contained therein.

* * * * *

(e) *Civil penalties.* * * * Civil penalties will be assessed under part 231 of this chapter by using the applicable defect code contained on FRA's website at *www.fra.dot.gov*.

Appendix A to Part 238—[Removed and Reserved]

85. Remove and reserve appendix A to part 238.

PART 239—[AMENDED]

86. The authority citation for part 239 continues to read as follows:

Authority: 49 U.S.C. 20102-20103, 20105-20114, 20133, 21301, 21304, and 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

87. Revise the last sentence of § 239.11 to read as follows:

§ 239.11 Penalties.

* * * FRA's website at *www.fra.dot.gov* contains a schedule of civil penalty amounts used in connection with this part.

Appendix A to Part 239—[Removed]

88. Remove appendix A to part 239.

PART 240—[AMENDED]

89. The authority citation for part 240 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

90. Revise the last sentence of § 240.11(a) to read as follows:

§ 240.11 Penalties and consequences for noncompliance.

(a) * * * See FRA's website at *www.fra.dot.gov* for a statement of agency civil penalty policy.

* * * * *

Appendix A to Part 240—[Removed and Reserved]

91. Remove and reserve appendix A to part 240.

PART 241—[AMENDED]

92. The authority citation for part 241 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301, 21304, 21311; 28 U.S.C. 2461, note; 49 CFR 1.89.

Appendix B to Part 241—[Removed and Reserved]

93. Remove and reserve appendix B to part 241.

PART 242—[AMENDED]

94. The authority citation for part 242 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135, 20138, 20162, 20163, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

95. Revise the last sentence of § 242.11(a) to read as follows:

§ 242.11 Penalties and consequences for noncompliance.

(a) * * * See FRA's website at *www.fra.dot.gov* for a statement of agency civil penalty policy.

* * * * *

Appendix A to Part 242—[Removed and Reserved]

96. Remove and reserve appendix A to part 242.

PART 243—[AMENDED]

97. The authority citation for part 243 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20131-20155, 20162, 20301-20306, 20701-20702, 21301-21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

98. Revise the last sentence of § 243.7(a) to read as follows:

§ 243.7 Penalties and consequences for noncompliance.

(a) * * * See FRA's website at *www.fra.dot.gov* for a statement of agency civil penalty policy.

* * * * *

Appendix to Part 243—[Removed]

99. Remove the appendix to part 243.

PART 270—[AMENDED]

100. The authority citation for part 270 continues to read as follows:

Authority: 49 U.S.C. 20103, 20106-20107, 20118-20119, 20156, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

101. The stay of 49 CFR part 270 is lifted.

102. Revise the last sentence of § 270.7(a) to read as follows:

§ 270.7 Penalties and responsibility for compliance.

(a) * * * FRA's website at *www.fra.dot.gov* contains a schedule of civil penalty amounts used in connection with this part.

* * * * *

Appendix A to Part 270—[Removed and Reserved]

103. Remove and reserve appendix A to part 270.

104. Title 49 CFR part 270 is stayed until September 4, 2019.

PART 272—[AMENDED]

105. The authority citation for part 272 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20109, note; 28 U.S.C. 2461, note; 49

CFR 1.89; and sec. 410, Div. A, Pub. L. 110-432, 122 Stat. 4888.

Appendix A to Part 272—[Removed]

106. Remove appendix A to part 272.

Issued in Washington, DC.

Ronald L. Batory,

Administrator.

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